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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,123	03/21/2006	Keith Woelfel	02280.003470.1	5999
5514 7590 08/30/2010 FITZPATRICK CELLA HARPER & SCINTO 1290 Avenue of the Americas NEW YORK, NY 10104-3800			EXAMINER PADEN, CAROLYN A	
			ART UNIT 1781	PAPER NUMBER
			MAIL DATE 08/30/2010	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/532,123	Applicant(s) WOELFEL, KEITH	
	Examiner Carolyn A. Paden	Art Unit 1781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 12-15 and 17-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 12-15 and 17-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7-19-10</u> . | 6) <input type="checkbox"/> Other: _____ |

Claims 1, 12, 13 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims contain an optional step or coating and it is unclear if steps e1 and e2 or the non-stick coatings are intended to be included or not. An amendment to the claim either cancelling "optionally" would overcome the rejection. As an alternative, an amendment to the claims cancelling the optional step or coatings and then including the step or coating in new dependent claims would overcome the rejection.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-7, 12-15, 17-18 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Budd (4,910,031).

Budd discloses topped savory snack foods. In example 2, corn collets were place in a seasoner with oil, cheddar cheese powder and salt. This is seen to correspond to step d1. The coating is not dried in Budd because the ingredients are hydrophobic and would not be expected to contain water.

Next the edible binder is added. Here sugar and water with other ingredients are sprayed onto the product and the coated product is dried in a vacuum oven. In example III particulate toppings are included. The toppings include bacon bits and cheese particles. At column 4, lines 52-57, the toppings are disclosed to have a fat content of 10-70% and are often tacky. These toppings are seen to be temperature sensitive inclusions because of the fat content and particular size of the toppings. This is seen to correspond to steps a through c. Drying is disclosed at column 5, lines 35-40 to range from 30C to 90C.

Finally the finished product is improved by applying a non-stick binder to protect the coating transferring to the hands of the consumer. This appears to correspond to step e1.

The claims appear to differ from Budd in the recitation of the water activity of the core. It is appreciated that the water activity of the core is not

mentioned but one of ordinary skill in the art would expect dried corn cobilets to have a low water activity. It is also appreciated that the water activity of the binder is not the same as that disclosed by Budd. The water activity of the sugar coating is disclosed at column 2, lines 40-50. But then the coating is dried in a vacuum oven and would be expected to fall within the range of claims 7 and 18.

It would have been obvious to one of ordinary skill in the art to use bacon and cheese in the process of Budd to coat food with temperature sensitive inclusions. It is appreciated that the binder is not disclosed to contain a film former. Applicant uses maltodextrin for both film former and adhesive agent at page 10 of his specification. Budd discloses maltodextrin as one of his preferred sugars at column 3, lines 42-45. It would have been obvious to expect that maltodextrin binder in Budd to include both an adhesive and film forming properties. No unobvious or unexpected result is seen from the selection of starch as a film former.

The rejection of the claims over Hemker has been withdrawn in response to applicants' amendments to the claims.

Claims 4, 8, 9 and 20 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office

action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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/Carolyn Paden/

Primary Examiner 1781